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SUPREME COURT OF THE UNITED STATES.

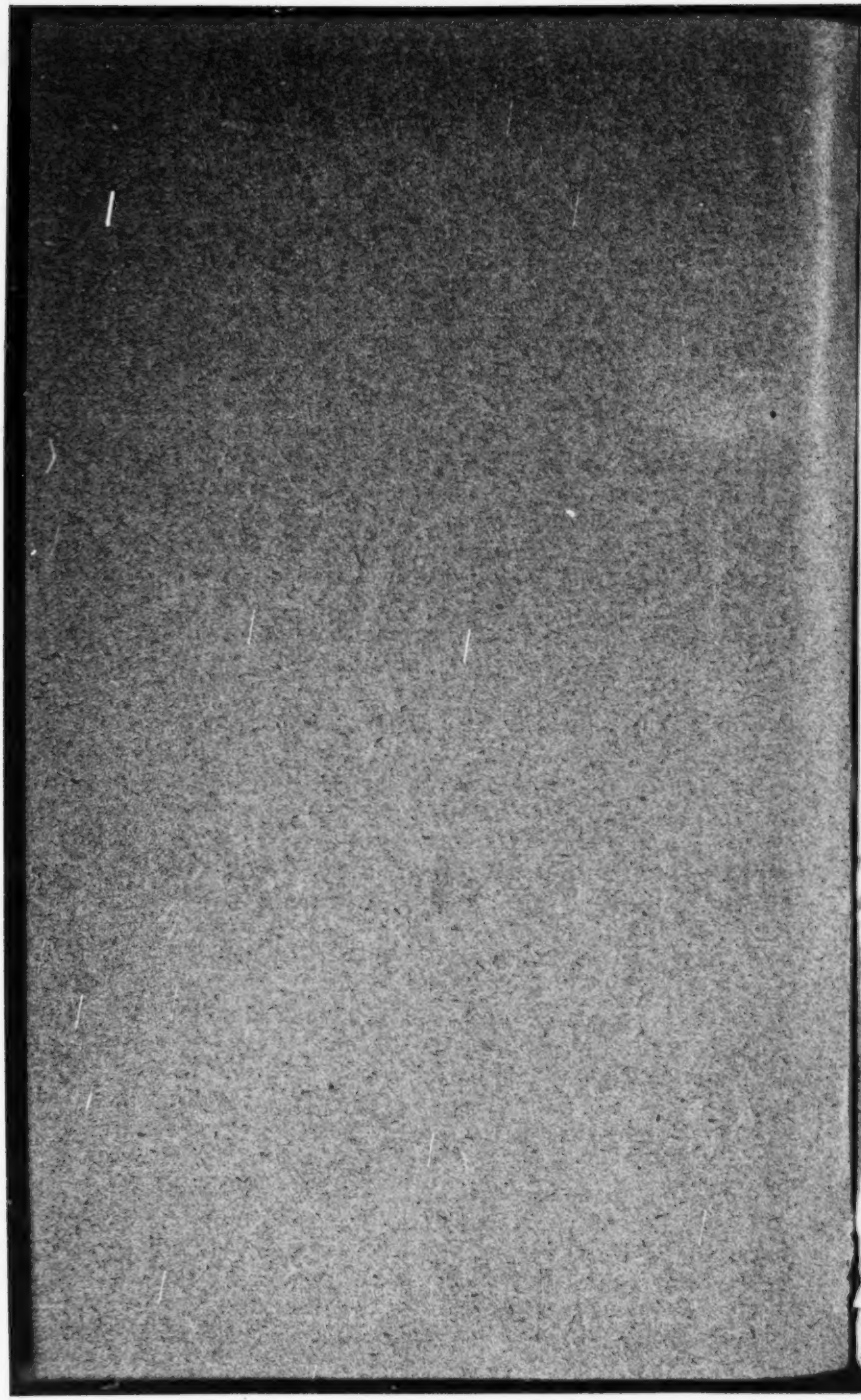
CLARA PERRY, OWNER OF THE CANAL BOAT "ROBERT W. PARSONS," PLAINTIFF IN ERROR,

vs.

CORNELIUS L. HAINES, DFFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

Brief for Defendant in Error.



I

This proceedings was commenced in the Supreme Court of the state of New York by petition pursuant to Chapter 23, Title 4 of the Code of Civil Procedure of the state of New York, and a warrant for the seizure of said canal boat, Robert W. Parsons, was issued therein pursuant to the authority of said Chapter 23, Title 4 of the Code of Civil Procedure, and by virtue of said warrant said canal boat Robert W. Parsons was seized herein. An application to vacate said attachment was thereafter made by Clara Perry, owner, on the ground that it was alleged by said owner that the proceedings authorized by said chapter 23, Title 4 of the Code of Civil Procedure were in violation of the constitution of the United States for the alleged reason that the contract for the furnishing of the repairs to the said canal boat Robert W. Parsons, mentioned in the petition herein, was a maritime contract in the enforcement of which United States Courts of Admiralty had exclusive jurisdiction. This motion was denied by Hon. Truman C. White, Justice of the Supreme Court, at special term on November 29, 1899, and from which order an appeal was taken by Clara Perry to the Appellate Division of the Supreme Court and affirmed.

In re Haines 52 App. Div. N. Y. 550.

The original proceeding was instituted before Hon. Henry A. Childs, Justice of the supreme court and after the denial of said application for attachment, was continued before him and an order for sale made by him and also a final order directing the distribution of the proceeds. Clara Perry, owner, appeared by Messrs Clinton & Clark and opposed the granting of said orders by Hon. Justice Childs on the ground that the state court had no jurisdiction. Their objections were overruled by said Justice and said orders granted.

From these orders appeal was taken to the appellate division of the supreme court and affirmed (57 App. Div. N. Y. 636 memo.) and from that order of affirmance, appeal was taken to the court of appeals of the state of New York and again affirmed. The facts before the courts were substantially the same on all hearings and appeals, the appellate division on second appeal holding that no new facts appeared that were not considered in the former appeal.

The judgment of the court of appeals was on July 11, 1901, remitted to the supreme court of the state of New York, according to New York practice, and on July 26th 1901, said judgment by order of the supreme court dated that day was made a judgment of the supreme court of the state of New York and was formally entered

as such a judgment on Oct. 24, 1901 at 1 o'clock p. m.,—to that judgment this writ of error is directed.

II

Title 4 of Chapter 23, of the Code of Civil Procedure of the state of New York was a re-enactment of a previous act of the Legislature (Chap. 482, Laws of 1862) of said state, for the enforcement of liens against ships and vessels This previous enactment of the Legislature has been construed by the courts of the state of New York and held unconstitutional so far as it provides a remedy for the enforcement of a *maritime contract*, but to be constitutional and effective so far as it relates to the enforcement of liens by virtue of ordinary domestics contracts for the furnishing of repairs and supplies to domestic craft, such as boats constructed and used on the inland canals of the state—It being held that these are not maritime contracts within the meaning of the constitution of the United States.

Shepard v. Steele, 43 N. Y. 52;
Mott v. Lansing, 53 N. Y. 554.
Poole v. Kermit, 59 N. Y. 555.
Nelson v. Lawrence, 82 N. Y. 409.
Brookman v. Hamil, 43 N. Y. 112.
Fralich v. Betts, 13 Hun. (N Y.) 632.
People's Ferry Co. v. Biers, 20 How. E. S. 393 to 402.
Allen v. Newbury, 21 How. U. S. 245.
Propellor Genesee Chief v. Fitzhugh, 12 How. U S. 443.
McGuire v. Card, 21 How. U. S. 248
Happy v. Mosher, 48 N. Y., 78.
Delaney v. Britt, 51 N. Y., 78.
In re Haines, ——————N. Y.

III

A stipulation was made (see Transcript of Record p. 11) by which in order to avoid a reference to take testimony, it was stipulated that the witnesses would swear to the *facts* stated in their affidavits and also admits other immaterial facts. Said Stipulation states that the facts (not the conclusions) were to be taken as true, consequently it has not been stipulated as stated in appellant's brief on prior argument that the lien is founded upon a maritime contract. This conclusion is for the court to decide, and has been decided by all the courts of the state of New York in the negative, and was not stipulated, nor intended to be stipulated.

The Parsons was built as an ordinary canal boat and was run for

eighteen years on the Erie Canal and Hudson River; has no propelling power, and can be propelled only by horse power while on the Erie canal and cannot be propelled in any other water except by being attached to some other boat.

The subject of the lien was for building permanent repairs on the boat, to-wit: The side of the boat and cheek plank were rebuilt into her. The repairs were performed, not while the boat was on the water, but while the boat was on the dry dock at Middleport N. Y., an inland town. Without these repairs the boat could not navigate.

When the repairs were made the boat had been navigating the Erie canal on its way to the City of Buffalo from the City of New York. When seized it was making a trip from the City of Buffalo to the city of Brooklyn. (See affidavits of Cornelius L. Haines and Levi Perry, pp. 9 and 10.)

The *Parsons* was built to navigate the Erie canal and had run on this canal eighteen years, and also on the Hudson river.

It is a well-known fact that all canal boats are towed through the Hudson River and around New York harbor to and from different docks, but the *Parsons* of itself was absolutely unable to navigate in other waters except the Erie canal, unless it should be attached to some other boat.

At the time when the repairs were made, the contract was made at Middleport, N. Y., and the boat had proceeded from New York City and was on its way to Buffalo, and at the time when seized was on its way from Buffalo to Brooklyn and was therefore wholly engaged in navigating between different points in the same state.

The fact that it was afterwards and at some other time towed to Jersey dock and loaded would not change its character so far as Haines' contract was concerned for at the time Haines' contract was made and at the time of seizure, appellant's boat "was but an ordinary canal boat propelled by horse power and was not employed in the business of commerce and navigation between ports and places in different states and territories of the United States upon the lakes and navigable waters of the United States."

"Its navigating ventures were confined to the Erie canal and Hudson river." "Such a boat as the one in question cannot and does not navigate the high seas. The purpose for which it was constructed and used was to engage in commerce between the city of New York and various points upon the Erie canal in the western

part of the state." "In order to carry out this business it was necessary that it should be towed through the Hudson River" and also through the New York harbor, and "its sole purpose and occupation was" "that of navigating inland and domestic waters."

As aforesaid, the boat was at one time towed to Jersey City to load, but this was some time after the Haines contract was made, yet even assuming that it might have been on the very same trip when Haines made his contract with Perry the fact that the boat was taken over to Jersey City to load was but an incident in its trip and business of running between New York and Buffalo and could not effect the character of the boat.

(See prevailing opinion 52 App Div. N. Y. 550.)

In the practice in the state of New York, the Appellate Division of the Supreme Court settles the questions of fact Appeals beyond that apply the law to the facts as established by the court below subject to review by the Appellate division. The foregoing facts must, therefore, be considered as established before the court in the case at bar, as they are set forth in the opinion of the court.

IV

The Admiralty is a maritime court instituted for the purpose of administering the law of the sea. (The Lottawanna 21 Wal. 567) and the question as to the true limits of maritime law and admiralty jurisdiction is exclusively a judicial question and no state law or act of congress can make it broader or narrower than the judicial power may determine these limits to be, but what the law is within these limitations, assuming the maritime law to be the basis of the system depends on what has been received as law in the maritime usages of this country, and on such legislation as may have been competent to affect it. (The Lottawanna 21 Wall 558)

It is, of course, conceded that the United States Courts of Admiralty have exclusive jurisdiction of all maritime contracts, and the question of law to be submitted to this court, is, where the line should be drawn between an ordinary contract, of which the courts in general have jurisdiction, and a maritime contract of which, and concerning the remedy to enforce which, jurisdiction is confined exclusively to the United Stated District Courts.

It, therefore, remains necessary to determine what was meant by the framers of the Constitution when the term maritime contract was referred to and by what criterion we are to determine the precise limits of the law thus adopted. The Constitution does not define it nor does the Constitution attempt to draw the boundary between

maritime law and local law nor does it lay down any criterion for ascertaining that boundary.

Decisions of the courts are supposed to be founded upon common sense application of reasons for construction of a statute of the Constitution. In order to ascertain what was the scope of the Constitution, it was necessary to review the *reason* for the judicial decision upon the point involved. The reason advanced for making any contract a so called maritime one is that a vessel which travels between foreign ports if laid up in a foreign port must have credit in order to be able to return home in some instances. For that reason it is held that contracts in relation to such a vessel, its supplies and repairs, in a foreign port are maritime. By the maritime law, it is the last contract for supplies and repairs that has precedence over all others in relation to the vessel, and as has been said "the whole object of giving Admiralty process and priority of payment to privileged creditors is to furnish wings and legs to the vessel to get the vessel back for the benefit of all concerned, that is to complete her voyage." (J. E. Rumbell 148 U. S. 9.) This was for the purpose and reason of getting the vessel back within the jurisdiction of its home courts. For the same reason, it has always been held that a contract for supplies or repairs to any vessel whether sea-going or not in its home port was not a maritime one simply because there was no reason for it. The local courts had sufficient jurisdiction. Thereafter the state and local laws gave liens for supplies and repairs furnished in the home port of a vessel, and it has been held that after a local law had given such a lien, it became maritime for the reason that after a lien attaches and is continued a sea-going vessel would naturally sail to a foreign port and in that port the local laws could not be invoked, and an enforcement of the lien would require resort to an Admiralty Court. There are different reasons for applying such a doctrine. By subsequent decisions of this court, it has been held that for the purpose of ascertaining whether a contract is maritime that the different states of the Union might be considered as foreign to each other, and for that reason contracts in relation to vessels engaged in interstate commerce were regarded as maritime. This for the reason that a state could not enforce its lien beyond its own boundaries and it would be necessary that an Admiralty Court provide a remedy. Beyond this no decision of this or any other Admiralty Court has ever gone and beyond this no reason could be found or applied for resorting to Admiralty jurisdiction.

In fact, never before in any case before this Court has it been attempted to confine contracts relating to an absolutely impotent ves-

sel (ie. one propelled by horse power by means of a rope attached to a team of horses walking on the land) to the exclusive jurisdiction of the Admiralty Courts. In all previous cases before this Court there was involved sea-going ships or vessels plying between foreign countries or engaged in coasting trade between different states and territories, or steam boats enrolled and licensed and engaged in interstate commerce and able of themselves to travel between ports and places of different states.

The question has been discussed in its various phases by this court on several occasion.

The St. Lawrence, 1 Black 522;
The Commerce, 1 Black 578;
Peyroux v. Howard, 7 Peters, 324;
The Orleans, 11 Peters, 175;
The General Smith 4 Wheat. 438;
Waring v. Clark, 5 How. 452;
The Lexington, 6 How. 392;
The Genesee Chief, 12 How. 443, 454;
The Magnolia, 20 How. 298;
The Jefferson, 20 How. 393;
Allen v. Newburry, 21 How. 245;
McGuire v. Card, 21 How. 250;
The Capitol, 22 How. 129;
Hine v. Trevor, 4 Wall. 555;
The Belfast, 7 Wall. 637;
The Eagle, 8 Wall. 20.
The Grape Shot, 9 Wall. 129;
The Lulu, 10 Wal. 197;
The Kalorama, 10 Wall. 205;
The Custer, 10 Wall. 215;
Ins. Co. v. Dunham, 11 Wall. 21;
Ex parte McNeal, 13 Wall 243;
Edwards v. Elliott, 21 Wall. 532;
The Lottawanna, 21 Wall. 558;
Ex parte Boyer, 109 U. S. 629;
In re Garnet, 141 U. S. 8;
The J. E. Rumbull, 148 U. S. 1;
The Glide, 167 U. S. 606;
Workman v. Mayor, 179, U. S. 553;
Miller v. Mayor, 199 U. S. 385.

In the matter of The St. Lawrence (1 Black 522.) was a proceeding in rem to libel an ocean going steam vessel for supplies furnished

in its home port, and it was held in this case that in as much as the tide ebbed and flowed at the port where the supplies were furnished that it was therefore a maritime contract and could be enforced in admiralty.

Peyroux v. Howard (7 Peters 324), The General Smith (4 Wheat 438) and The Orleans (11 Peters 175) are all cases involving practically the same question, viz—that a contract for furnishing supplies in a home port of a vessel could be enforced in admiralty on the ground that the tide ebbed and flowed there, and in the case of The Orleans the libel was dismissed for the reason that it was not shown that the tide did ebb and flow. All these vessels which were the subject of the last three mentioned cases were also ocean going steam vessels.

The Commerce (1 Black .578) involved a steam propellor which was navigating on the Hudson River and along the coast on a voyage from Albany to Philadelphia, Pa, therefore an ocean going vessel. The libel was for a tort, and this case established a somewhat different rule for the recognizance of Admiralty jurisdiction in cases of tort as distinguished from cases of contract. That in case of a tort, it does not depend upon the regulations of commerce, but entirely on locality, and to base the decision on the ground that if a *wrongful act* is done on navigable water, the case is properly cognizant in admiralty court. In this case admiralty ~~jurisdiction~~ was given jurisdiction on the ground that a maritime tort was subject to admiralty jurisdiction even though there was no state law giving any lien.

The decision in Waring v. Clark (5 How. 452) was to the same effect, and the same principal was involved in the Boyer case (109 U. S. 629) In Waring v. Clark, however, the court followed decisions on the St. Lawrence and the Commerce, and held that the admiralty had jurisdiction on rivers if the tide ebbed and flowed and distinguishes a tort as depending on a different rule than that of a contract.

The Genesee Chief (12 How. 454) and The Eagle (8 Wall 20) were cases involving steam vessels navigating the Great Lakes It was held in these cases that admiralty had jurisdiction over a marine tort committed on the Great Lakes; both cases involved steam vessels engaged wholly in interstate commerce and in the case of The Eagle, the tort having been committed in Canadian waters.

In the case of the Magnolia (20 How. 298) was where a vessel navigating between ports of two different states on a river, through a harbor and along the Gulf of Mexico to another harbor in another

state, and it was held that admiralty had jurisdiction of a tort committed on this voyage by this boat on the Alabama River This decision is perfectly consistent with that in The Commerce, St. Lawrence and other cases above cited. This case also involved an ocean going steam boat engaged in interstate commerce.

The Jefferson (20 How. 393) was a case where a lien for materials furnished to an ocean going vessel by the builder was attempted to be enforced in Admiralty court, and it was held that such a lien was not a maritime lien and could not be enforced in admiralty. To the same effect was the decision in the Capitol (22 How. 129.)

Hine v. Trevor (4 Wall 555) follows the principal in the matter of the St. Lawrence above cited, and held admiralty had jurisdiction for repairs and supplies furnished a sea going steam vessel in its home port where the tide ebbed and flowed.

The Lexington (6 How. 392) and the Belfast (7 Wall. 637) were cases where the jurisdiction of the Admiralty Court was invoked on an affreightment contract; both cases involved ocean going steam boats engaged in interstate and foreign navigation, enrolled and licensed, and it was held that in as much as the contract was ~~done~~ made in reference to tide waters that admiralty had jurisdiction.

In Allen v. Newbury (21 How. 245) and McGuire v. Card (21 How. 250) were both cases where jurisdiction in admiralty was refused, and in both cases it was sought to enforce in admiralty liens for supplies and repairs pursuant to state laws giving such liens against vessels employed on the Great Lakes. The vessels involved in these cases were also steam boats, and had been engaged in interstate traffic. In the Allen v. Newbury case, it was stated in the opinion that "Admiralty jurisdiction should be confined to the high seas only and should not be extended to vessels which only navigate between points of different states within the United States". In the McGuire v. Card case it was held that a lien given by the state laws should be enforced in the state courts even though the state in which the vessel navigates be situated on the sea coast. In both of these cases Admiralty jurisdiction was refused by this court.

The Grape Shot (9 Wall. 129), the Lulu (10 Wall. 197), the Kalorama (10 Wall 205) and the Custer (10 Wall. 215) were all vessels engaged in foreigh commerce with foreign countries and were ocean going and in this case the jurisdiction of the Court of Admiralty was invoked to enforce a bottomry bond. The decision was on the ground that necessity for the use of a bottomry bond must be shown before it can be enforced, and these decisions have no particular application to the case at bar.

Insurance Company v. Dunham (11 Wall. 21) and Edwards v. Elliott (21 Wall 552) are also cases, the decisions in which have no particular application to the case at bar. The subject of the latter case was the enforcement of a contract for building a schooner. The subject of the Dunham case was the enforcement of a contract of marine insurance. Both cases were in reference to sea going steam vessels.

Ex parte McNeal (15 Wall. 236) was a proceeding in Admiralty to enforce a lien against an ocean going steamer for supplies furnished in its home port and the decision followed the decision in the St. Lawrence and other cases above cited.

In the Lottawanna (21 Wall 558), this court held, a contract for supplies furnished a vessel in its home port was not maritime and jurisdiction in Admiralty was refused, although the vessel which was the subject of the action was a steamer enrolled and licensed. The argument in this case cites Brookman v. Hamil 43 N. Y., 562, and the grounds upon which state jurisdiction is upheld in cases like the one at bar was very well set forth in the opinion by Judge Repello, of the New York Court of Appeals, in Brookman v. Hamil last cited.

Ex parte Boyer (109 U. S. 629) was a case of the collision of two vessels the one in question being an enrolled and licensed steamboat engaged in interstate traffic and licensed for the coasting trade. The object of this action was to enforce a libel for a maritime tort, and was decided on the same theory as the Commerce above cited.

In re Garnet (141 U. S. 8) was an action to recover by means of a libel in admiralty for damage occurring to a cargo by means of a fire which occurred on a trip of this boat from Augusta to Savannah and intermediate points of the states of South Carolina and Georgia. The vessel in question was enrolled and licensed to carry on the coasting trade and was a sea going steam vessel, and it was held in this action that Admiralty had jurisdiction, and followed the decisions in the Belfast and the Magnolia cases, and the decision was expressly put upon the ground that the boat was regularly enrolled and licensed and engaged in maritime commerce between different states, along the coast and upon the harbors and public navigable rivers connecting with the sea, and the character of the boat was conceded, and no state law was relied upon to create the lien.

In the J. E. Rumbell (148 U. S. 1) was a case where Admiralty was invoked by means of a proceeding in rem to enforce a lien against a vessel for repairs and supplies furnished in its home port. The vessel which was the subject of the action was a sea going

steam vessel and the repairs and supplies were furnished in the port where the tide ebbed and flowed, and it was held that admiralty had jurisdiction under the authority of the Planter. St. Lawrence and other cases above cited which decided the same identical principal.

The decision of this court in The Glide (167 U. S. 606) was to the same effect and the circumstances were practically the same, and the decision was reached by applying the same principals as in the Rumbell case. The vessel which was the subject of the action was a sea-going steam tug.

In Workman v. Mayor (179 U. S. 553), a maritime tort was the subject of the action. The boat was an ocean going steam-boat and was for a collision between that boat and another in the harbor of New York and occurred on waters where the tide ebbed and flowed. It was held that admiralty had jurisdiction of such a tort.

Miller v. Mayor (199 U. S. 385) the controversy was over an action brought by a tax payer to prevent the construction of the East River Bridge, and involved the construction of a statute of the U. S The decision does not seem to be in point with the case at bar except that the decision in this case was put upon the ground that the East River was a public navigable river over which Congress had power to regulate the matter of building bridges. It would not, of course, be seriously contended that Congress had power to regulate the building of bridges over the Erie canal.

Appellant also cited in his brief in the Court below the following as having some bearing on the question under discussion, viz:

The General Cass, 1 Brown Ad. 334;
The David Ball, 10 Wall. 557;
The Montello, 20 Wall. 430.

The latter three cases were, however, suits arising under a penal statute requiring certain boats to be enrolled and licensed, and in as much as all three were steamboats and engaged in interstate and foreign traffic, it was held that they were proper subjects of the license and enrollment laws. These cases could hardly be said to aid appellants contention here, because the boat in question in this case at bar was not enrolled nor licensed.

V

And now as to the question at issue here—an absolutely new question, nowhere touched or reached in any of the cases above cited—*Whether an ordinary Erie canal boat—with no power or means of propulsion of its own—propelled by horse power on and from the land by means of a rope tow line—the boat not enrolled or licensed, and*

by long usage and custom not deemed subject to the license or enrollment laws,—not able of itself to escape from the Erie Canal, or the jurisdiction of the courts of the state of New York,—all parties residents and subject to the laws and process of the courts of the state of New York—is within exclusive civil and maritime jurisdiction and intended by the framers of the Constitution to be considered in the same important class as an Ocean Liner and to be dignified by exclusive admiralty process as to any and all contracts in relation to it.

Although operating the inland canals of New York State for more than fifty years, they have never been considered of enough significance nor sufficiently within maritime and admiralty usages to be required to become enrolled and licensed and no actions such as the three last cited are found in the books in relation to boats such as these

If this boat is subject to exclusive jurisdiction of admiralty, then its tow line must be (the same so called reasons apply) and by extending the argument the horses or mules must also be included,—and behold the ordinary farm horse, chattel mortgaged. is hitched to a towline, driven on the tow-path to Albany, taken aboard the boat to New York, towed over to Jersey City, thence back to Albany, taken off and to a blacksmith shop and shod, and straigntway the contract is maritime and the courts of Admiralty have *exclusive* jurisdiction to enforce this contract for shoeing, after the blacksmith loses possession. by proceedings in rem against the horse, cutting off the chattel mortgage and why ? Because they navigate the Erie canal (a portage between Lake Erie at Buffalo and the Atlantic ocean at New York) and have been to New Jersey once.

This is not intended as levity but simply to show the utter absurdity of the contention in this case at bar if followed and continued.

It is contended that admiralty is constantly extending its jurisdiction and that it should go further. But has it not already gone about as far as any common sense reason can be found for its extension ?

It is contended that the Erie canal is navigable water connecting the Great Lakes with the sea, its navigability being such as to give admiralty jurisdiction over it (Ex parte Boyer 109 U. S. 629, being cited as precedent for such doctrine) and assuming this to be true for the purpose of argument—does it follow that everything that floats on it, no matter how insignificant, is subject to the same admiralty jurisdiction. In ex parte Boyer, 109 U. S. 629, the opinion expressly states it to be in relation to boats "such as these"

(steamboats enrolled and licensed for the coasting trade). The boat which is the subject of this action is not "such as these in question" in the Boyer case, and no case regarding a boat like the one in the case at bar has ever been before this court and decided to be subject to the exclusive jurisdiction of Admiralty Courts in the enforcement of contracts in relation to it.

The New York courts have never attempted to conflict with the United States courts as to jurisdiction in this regard, but all decisions on this subject are in complete accord with the decisions of this court on this subject.

VI

The courts of the state of New York have, therefore, established a rule for the guidance of its citizens respecting the jurisdiction of the state courts as to liens against its own domestic vessels. This rule is not in conflict with any of the cases decided by this court. The rule is well set forth in the decision entitled Brookman v. Hamil, 43 N. Y. 554. and in the opinion of that case Judge Repello says: "To test the validity of these attachment liens in their operation upon particular cases, two questions must be determined. First: Is the *claim* of the attaching creditor to enforce which the state undertakes to give a lien and attachment a *maritime claim* cognizable in the courts of Admiralty? Secondly: Is the remedy given by the state law one which the common law did not give? An answer to either of them in the negative leaves their jurisdiction unaffected". (Opinion page 557).

The decisions of this court heretofore filed are uniform in that a claim for supplies and repairs in a home port is not a maritime claim. The claim for repairs and supplies only becomes maritime when a boat is in a foreigh port where the owner is supposed not to be known and it becomes maritime for a reason, viz: To give the ship wings and legs with which to sail home for the benefit of all concerned (J. E. Rumbell 148 U. S. 9). Therefore the claim of the attaching creditor in the case at bar is not a maritime claim. The answer to the first question is in the negative. The common law in respect to chattels has always given liens, sometimes a possessory lien, to a mechanic who furnishes attachments to it or performs labor upon it or in any way repairs it Therefore the attaching creditor in this case a bar had a lien which the common law gave. The statute of the state of New York simply extended this lien so that an attaching creditor could part with possession long enough to enable the boat to earn sufficient to pay for its repairs. The an-

swer to the second question is in the negative. The jurisdiction of the courts therefore, according to the argument of Judge Repello, above referred to will remain unaffected,

The principal cases decided by the courts of the state of New York on this subject are the following:

Shepard v. Steele, 43 N. Y., 52;
Mott v. Lansing, 53 N. Y., 554;
Poole v Kermit, 59 N. Y., 555;
Wilson v. Lawrence, 82 N. Y., 409;
Brookman v. Hamil, 43 N. Y.. 554.

A review of these decisions will disclose the fact that none of them are or have been in conflict with the decisions of this court on this subject.

VII

Courts of Admiralty cannot and do not exercise jurisdiction in any form over what is termed as land contracts and give as a reason for this that these contracts are made on land and to be performed on land. Many of the decisions above cited reiterate this principal and it seems to be well settled and in this regard this court has been followed by the courts of the State of New York.

People's Ferry Co. vs. Bears, 20 How. U. S. 393 and 402;
Shepard v. Steele, 43 N. Y., 52;
Brookman v. Hamil, 43 N. Y., 558.

The facts in the case at bar show that a contract for repairs was made on land at Middleport (Haines' dry dock), and was performed wholly and entirely on land in Middleport, N. Y., an inland town. Is there any reason therefore for refusing admiralty jurisdiction in the above cited cases that does not exist in the case at bar?

VIII

In all cases heretofore before this court involving questions of admiralty jurisdiction, the subject of the action has never consisted of a craft like the one in the case at bar It is always a steamboat, licensed, enrolled and able of itself to carry on commerce beyond the confines of its own state.

It never has been, and surely cannot now, be contended that a craft such as the one in the case at bar, was of such interstate or international importance as to require all contracts in relation to it to be considered maritime the same as a sea going vessel.

Appellant in prior argument has treated the character of the boat and the circumstances of the contract as unimportant, and has

given great weight to the so-called navigability of the waters of the Erie canal, and has cited as a principal precedent the case of ex parte Boyer (supra) 109 U. S 629. In this case, however, the court at the end of the opinion limited the extent of the jurisdiction so as not to extend to "waters wholly within the body of a state and over which vessels cannot so pass as to carry on commerce between places within said state and places in another state or foreign country."

The Supreme Court Appellate Division of the state of New York in settling the facts in this case held that "such a boat as the one in question cannot and does not navigate the high seas," * * "its sole purpose and occupation was that of navigating inland and domestic waters". This boat therefore in the case at bar could not pass out of the Erie canal of itself. These boats do not navigate the lakes and cannot, and the only time they leave the Erie canal is when attached to some other boat and then towed or carried to or in such places only as are inland or within a protected harbor even in that event.

If everything that floated on navigable water was the subject of a maritime contract for that reason only, then all contracts in reference to anything that floats anywhere are maritime as all running water finally reaches the sea. A limit line, therefore, as to admiralty jurisdiction, is necessary to be drawn somewhere and there surely is no reason and no precedent for including within the limit of such jurisdiction contracts in relation to boats such as the one in the case at bar in their navigating ventures on waters such as the Erie canal.

IX

Perry, living at St. Johnsville, N.Y., an inland town, owner of the canal boat *Parsons*, a boat able to navigate the Erie canal only, and in itself absolutely unable to navigate anywhere else, while on a trip up the canal stopped at Middleport, N. Y., another inland town, and on Haines' dry dock made a contract with Haines to furnish labor and material to repair the boat and rebuild a part thereof. and Haines pursuant to the contract made permanent repairs on the boat while said boat was on his land and in his possession in Middleport.

That these facts should constitute a *maritime contract* seems to appellee to be an absolutely absurd contention. The law in this respect in the state of New York has been regarded as settled for many years, and the bar, bench and legislature of this state have ever since been acting in accordance with the law so settled in reference

to these proceedings regarding canal boats such as these.

The standing of chattel mortgage liens and ownership interests are perfectly understood and relied upon and in accordance with the rule so settled, and it should not be shaken in regard to ordinary chattels such as the subject of this action without good reason.

As the court well said in the prevailing opinion written in this action by the Supreme Court of the state of New York "If the appellant's contention is well founded then the state courts are deprived of all jurisdiction to enforce liens for repairs made any boat navigating the Erie canal however insigniticent they may be," so also would the state courts be deprived of all jurisdiction of an action at law against the owner of the boat to recover the amount of the liens, for if the contract is maritime, then, of course, Admiralty has exclusive jurisdiction. There has been no decision of any court any where upon a similar state of facts holding such to be the law, and appellee is confident that it never has been intended to treat the remedy for the enforcement of such claims within the exclusive jurisdiction of the courts of admiralty Such a decision would render the state laws of the State of New York of practically no force or effect, and by increasing the importance of such a boat would cause litigants and claimants needless expense and great inconvenience by resorting to courts of admiralty in all claims or contracts in reference thereto notwithstanding the amount involved (in the case at bar less than $100.00) and which under the law as now and for several years considered settled are disposed of in a convenient and inexpensive manner by the state courts.

Appellee is confident that neither the contract nor lien are maritime in their nature or within admiralty jurisdiction and the orders appealed from should be affirmed.

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